NOTE: States which are authorized to administer the NPDES permit program under section 402 of CWA are encouraged to rely on existing statutory authority, to the extent possible, in developing a State UIC program under section 1422 of SDWA. Section 402(b)(1)(D) of CWA requires that NPDES States have the authority ''to issue permits which * * * control the disposal of pollutants into wells.'' In many instances, therefore, NPDES States will have existing statutory authority to regulate well disposal which satisfies the requirements of the UIC program. Note, however, that CWA excludes certain types of well injections from the definition of ''pollutant.'' If the State's statutory authority contains a similar exclusion it may need to be modified to qualify for UIC program approval.

§ 123.29 Prohibition.

State permit programs shall provide that no permit shall be issued when the Regional Administrator has objected in writing under § 123.44.

§ 123.30 Judicial review of approval or denial of permits.

All States that administer or seek to administer a program under this part shall provide an opportunity for judicial review in State Court of the final approval or denial of permits by the State that is sufficient to provide for, encourage, and assist public participation in the permitting process. A State will meet this standard if State law allows an opportunity for judicial review that is the same as that available to obtain judicial review in federal court of a federally-issued NPDES permit (see § 509 of the Clean Water Act). A State will not meet this standard if it narrowly restricts the class of persons who may challenge the approval or denial of permits (for example, if only the permittee can obtain judicial review, if persons must demonstrate injury to a pecuniary interest in order to obtain judicial review, or if persons must have a property interest in close proximity to a discharge or surface waters in order to obtain judicial review.) This requirement does not apply to Indian Tribes.

[61 FR 20980, May 8, 1996]

§ 123.31 Requirements for eligibility of Indian Tribes.

(a) Consistent with section 518(e) of the CWA, 33 U.S.C. 1377(e), the Re-gional Administrator will treat an Indian Tribe as eligible to apply for NPDES program authority if it meets the following criteria:

(1) The Indian Tribe is recognized by the Secretary of the Interior.

(2) The Indian Tribe has a governing body carrying out substantial governmental duties and powers.

(3) The functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust for the Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation.

(4) The Indian Tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions to be exercised, in a manner consistent with the terms and purposes of the Act and applicable regulations, of an effective NPDES permit program.

(b) An Indian Tribe which the Regional Administrator determines meets the criteria described in paragraph (a) of this section must also satisfy the State program requirements described in this part for assumption of the State program.

[58 FR 67981, Dec. 22, 1993, as amended at 59 FR 64343, Dec. 14, 1994]

§ 123.32 Request by an Indian Tribe for a determination of eligibility.

An Indian Tribe may apply to the Regional Administrator for a determination that it qualifies pursuant to section 518 of the Act for purposes of seeking NPDES permit program approval. The application shall be concise and describe how the Indian Tribe will meet each of the requirements of § 123.31. The application shall include the following information:

(a) A statement that the Tribe is recognized by the Secretary of the Interior;

(b) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. This statement should: